IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1621 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

GOVINDBHAI HIRABHAI

Versus

DIST DEVELOPMENT OFFICER

Appearance:

No one has appeared on behalf of the petitioners
MR HS MUNSHAW for Respondent No. 1
MR MUKESH PATEL AGP for Respondent No. 2

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 17/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. It appears that connected Special Civil Applications No.1615/90, 1616/90, 1618/90, 1619/90 and 1620 of 1990 were decided on 15.4.1998 by the Division Bench (Coram: K.G.Balakrishnan and J.M.Panchal, JJ.). Yet another connected Special Civil Application No.1617/90 was also disposed by a Division Bench (M.B.Shah and V.H.Bhairavia, JJ.) on 28.1.1992. It further appears that on 12.3.1990 an order was passed by a Division Bench in Special Civil Applications No.1615 to 1620 of 1990 to the effect that the petitioners shall file separate petitions for each of the petitioners. It does not appear that even this order was complied with so far as the petitioners of this Special Civil Application No.1621 of 1990 are concerned. We have also noticed that in the order dated 17.3.1992 passed by a Division Bench in this Special Civil Application, the Court has noticed that the matter was on the Board since 28.2.1992 but despite the efforts of the Court to secure the presence of the counsel for the parties, they were not able to make themselves available and, therefore, the Court directed this matter to be taken off the Board of fixed matters and to be placed for final hearing in ordinary course.

2. Through this petition, the petitioners came with the case that their lands situated at Village Shahpur, Taluka Dhandhuka, District Ahmedabad had been taken by the Executive Engineer of Ahmedabad Jilla Panchayat for the purposes of constructing irrigation pond and that possession of the said land was taken by the Executive Engineer before 8 to 9 years. Based on this factual premise, a direction was sought against the respondents to pay 80% of the compensation to the petitioners that can be determined by the respondents during the pendency and final hearing of this petition, because a grievance was raised that no acquisition proceedings were held and no award has been passed although the possession had been taken. On behalf of the respondents, an affidavit-in-reply dated 15.7.1991 has been filed. Throughout this reply, it has been pleaded that the respondents or its subordinate officers have not taken possession of the land belonging to the petitioners and it has been categorically denied in para 5 that such possession was taken over by the Executive Engineer before 8 to 9 years. In para 6 of this reply dated 15.7.1991 filed under the signature of Shri K.B.Buch, District Development Officer, Ahmedabad District Panchayat, it has been stated that there is no requirement of the lands belonging to the petitioners for public purpose and when the lands were not acquired or

the possession thereof was not taken over by the respondents, there is no question of assuring the petitioners or the land owners about the compensation to be paid to them. Thus, the basic fact that the lands were acquired and that the possession of the lands were taken over has been categorically denied in the reply. In para 10 of the reply it is further stated that the land is not likely to be acquired for public purpose and, therefore, there is no question of making any payment of compensation. We have also taken note of the affidavit-in-rejoinder dated 18.12.1991 filed by the petitioners and in para 3 of this affidavit-in-rejoinder it has been stated that the affidavit-in-reply filed by respondent No.1 Shri K.B.Buch, D.D.O. and Shri D.M.Dodiya, Executive Engineer, Irrigation (Panchayat) is false and incorrect. Thus, from the pleadings of the parties as contained in the Special Civil Application, affidavit-in-reply and the affidavit-in-rejoinder thereto, we find that there is a serious disputed question of fact as to whether the lands of the petitioners were at all required for any irrigation project, as to whether they were acquired or not and whether the possession thereof had been taken or not and in view of such basic facts being in dispute, it is not possible for this Court to issue any driections with regard to payment of 80% of the compensation as prayed by the petitioners. The petitioners are, therefore, not entitled to any relief in this petition under Article 226 of the Constitution of India. This Special Civil Application is hereby rejected. Rule is discharged. In the facts and circumstances of the case, no order as to costs.

Sd/-
(M.R.Calla, J.)

Sd/-

17.3.2001 (D.H.Waghela, J.)
(KMG Thilake)